

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6518

Joint Petition of I-Link Communications, Inc., I-)
Link, Inc., and Counsel Communications LLC, for)
Approval of a Indirect Transfer of Control)

Order entered: 9/6/2001

I. INTRODUCTION

This case involves a petition filed on June 22, 2001, by I-Link Communications, Inc. ("ILC"), I-Link, Inc. ("I-Link") and Counsel Communications, LLC ("Counsel") (jointly "Petitioners"), seeking Vermont Public Service Board ("Board") approval, *nunc pro tunc*, under 30 V.S.A. § 107, for approval of an indirect transfer of control of ILC to Counsel.¹

On August 10, 2001, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the transfer of control. The Department noted that the transaction would be transparent to Vermont consumers and would not involve a change in the management or services of ILC. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107.

II. FINDINGS OF FACT

Based upon the petition and accompanying documents, the Board makes the following findings of fact.

1. ILC is a Utah corporation and a wholly-owned subsidiary of I-Link, a Florida corporation. ILC received a Certificate of Public Good (CPG No. 306) to provide telecommunications services in Vermont on July 2, 1997, under the name of Family Telecommunications. Subsequently, in Docket No. 6086, Order dated November 5, 1998, its name was changed to ILC. I-Link is not authorized to provide telecommunications services in Vermont. Petition at 1; Exhibit A; and Department's letter dated August 10, 2001.

1. The Petitioners' petition calls for approval of the transaction *nunc pro tunc*. That legal mechanism can only be applied to correct a record, to make an order relate back to a time when a case was ripe for decision and a decision should have been recorded, but was not. 49 C.J.S. §123 *et seq*. It is not the same as retroactivity, and cannot be used to make a decision effective before the time of the Order in this docket.

2. Counsel, a Delaware corporation, has no regulatory certification to provide telecommunications services in Vermont or any other state. Petition at 1 and Exhibit A.

3. Beginning in January of 2000, ILC, I-Link and Counsel executed a series of stock transfer and debt transactions resulted in Counsel acquiring at least 65% ownership interest in I-Link, ILC's parent corporation. Following the transaction, ILC continued to operate in all respects as it previously operated, pursuant to existing operating authority. Neither the name of nor the terms and conditions of service offered by ILC were affected by the transaction. Petition at 1-3.

4. Completion of the proposed transaction will serve the public interest in that it will promote competition among telecommunications providers by providing ILC with access to additional funding and management resources to strengthen its competitive positions and to pursue marketing and business plans more effectively. Petition at 4.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transaction requires Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility.² Under Section 107, a "controlling interest" is defined as 10% or more of the outstanding voting securities of a company. Section 107 requires a finding that the transfer of control will promote the public good. This standard is met in this case. The proposed transaction will promote the public good, because the indirect transfer of control of ILC will allow it access to greater financial resources, thus allowing the Company to operate in a more flexible manner. In the competitive arena of telecommunications, the overall effect of this transfer may promote more customer choice in terms of services, with stronger competitors in the Vermont telecommunications market. It should also be noted that the transfer of control will not have an adverse impact on Vermont consumers as ILC will continue to operate according to its present authority.

For all of the above reasons, the proposed indirect transfer of control of ILC to Counsel should be approved.

2. Approval under 30 V.S.A. §§ 231 and 311 is not required because the current holders of the Certificates of Public Good will continue to be the entities providing telecommunications service in Vermont.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The indirect transfer of control of I-Link Communications, Inc. to Counsel Communications, LLC, is approved.

DATED at Montpelier, Vermont, this 6th day of September, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: September 6, 2001

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.